

SENATE BILL NO. 308

INTRODUCED BY O'NEIL

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO INFORM A PARENT OR OTHER PERSON RESPONSIBLE FOR A CHILD'S WELFARE OF THE RIGHT TO HAVE ~~ANOTHER A SUPPORT PERSON PRESENT WHENEVER THE TERMS OF THE PROTECTIVE SERVICES ARE UNDER DISCUSSION~~ DURING AN IN-PERSON MEETING WITH A SOCIAL WORKER CONCERNING EMERGENCY PROTECTIVE SERVICES; AND AMENDING SECTIONS 41-3-301 AND 41-3-427, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 41-3-301, MCA, is amended to read:

"41-3-301. Emergency protective service. (1) Any child protective social worker of the department, a peace officer, or the county attorney who has reason to believe any youth is in immediate or apparent danger of harm may immediately remove the youth and place the youth in a protective facility. ~~The~~ AFTER ENSURING THAT THE CHILD IS SAFE, THE department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having physical custody of the youth OF THE PLACEMENT at the time the placement is made or as soon after placement as possible. Notification under this subsection must include the reason for removal, information regarding the show cause hearing, and the purpose of the show cause hearing AND MUST ADVISE THE PARENTS, PARENT, GUARDIAN, OR OTHER PERSON HAVING PHYSICAL CUSTODY OF THE YOUTH THAT THE PARENTS, PARENT, GUARDIAN, OR OTHER PERSON MAY HAVE A SUPPORT PERSON PRESENT DURING ANY IN-PERSON MEETING WITH THE SOCIAL WORKER CONCERNING EMERGENCY PROTECTIVE SERVICES.

(2) If a social worker of the department, a peace officer, or the county attorney determines in an investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or family member assault, as provided for in 45-5-206, against an adult member of the household or that the child needs protection as a result of the occurrence of partner or family member assault against an adult member of the household, the department shall take appropriate steps for the protection of the child, which may include:

(a) making reasonable efforts to protect the child and prevent the removal of the child from the parent

1 or guardian who is a victim of alleged partner or family member assault;

2 (b) making reasonable efforts to remove the person who allegedly committed the partner or family
3 member assault from the child's residence if it is determined that the child or another family or household
4 member is in danger of partner or family member assault; and

5 (c) providing services to help protect the child from being placed with or having unsupervised visitation
6 with the person alleged to have committed partner or family member assault until the department determines
7 that the alleged offender has met conditions considered necessary to protect the safety of the child.

8 (3) If the department determines that an adult member of the household is the victim of partner or family
9 member assault, the department shall provide the adult victim with a referral to a domestic violence program.

10 (4) A child who has been removed from the child's home or any other place for the child's protection
11 or care may not be placed in a jail.

12 (5) An abuse and neglect petition must be filed within 2 working days, excluding weekends and
13 holidays, of emergency placement of a child unless arrangements acceptable to the agency for the care of the
14 child have been made by the parents or voluntary protective services are provided pursuant to 41-3-302.

15 (6) Except as provided in the federal Indian Child Welfare Act, if applicable, a show cause hearing must
16 be held within 20 days of the filing of the initial petition unless otherwise stipulated by the parties pursuant to
17 41-3-434.

18 (7) If the department determines that a petition for immediate protection and emergency protective
19 services must be filed to protect the safety of the child, the social worker shall interview the parents of the child
20 to whom the petition pertains, if the parents are reasonably available, before the petition may be filed. ~~The~~
21 ~~department shall inform a parent of a child for whom a petition for immediate protection and emergency~~
22 ~~protective services is filed or other person responsible for the child's welfare that the parent or responsible~~
23 ~~person may have another person of the parent's or responsible person's choice present whenever the terms of~~
24 ~~the protective services are under discussion between the department and the parent or other person responsible~~
25 ~~for the child's welfare if an attorney has not been appointed or is not available to be present.~~ The district court
26 may immediately issue an order for immediate protection of the child. The district court may not order further
27 relief until the parents, if they are reasonably available, are given the opportunity to appear before the court or
28 have their statements, if any, presented to the court for consideration before entry of an order granting the
29 petition.

30 (8) The department shall make the necessary arrangements for the child's well-being as are required

1 prior to the court hearing."

2
3 **Section 2.** Section 41-3-427, MCA, is amended to read:

4 **"41-3-427. Petition for immediate protection and emergency protective services -- order --**
5 **service.** (1) (a) In a case in which it appears that a child is abused or neglected or is in danger of being abused
6 or neglected, the county attorney, the attorney general, or an attorney hired by the county may file a petition for
7 immediate protection and emergency protective services. In implementing the policy of this section, the child's
8 health and safety are of paramount concern.

9 (b) A petition for immediate protection and emergency protective services must state the specific
10 authority requested and the facts establishing probable cause that a child is abused or neglected or is in danger
11 of being abused or neglected.

12 (c) The petition for immediate protection and emergency protective services must be supported by an
13 affidavit signed by a representative of the department stating in detail the facts upon which the request is based.
14 The petition or affidavit of the department must contain information regarding statements, if any, made by the
15 parents detailing the parents' statement of the facts of the case. The parents, if available in person or by
16 electronic means, must be given an opportunity to present evidence to the court before the court rules on the
17 petition.

18 ~~(d) The department shall inform a parent of a child for whom a petition for immediate protection and~~
19 ~~emergency protective services is filed or other person responsible for the child's welfare that the parent or~~
20 ~~responsible person may have another person of the parent's or responsible person's choice present whenever~~
21 ~~the terms of the protective services are under discussion between the department and the parent or other person~~
22 ~~responsible for the child's welfare if an attorney has not been appointed or is not available to be present.~~
23 ~~Reasonable accommodations must be made regarding the time and place of meetings at which protective~~
24 ~~services are discussed with the parent or other person responsible for a child's welfare. THE PETITION FOR~~
25 ~~IMMEDIATE PROTECTION AND EMERGENCY PROTECTIVE SERVICES MUST INCLUDE A NOTICE ADVISING THE PARENTS,~~
26 ~~PARENT, GUARDIAN, OR OTHER PERSON HAVING PHYSICAL CUSTODY OF THE YOUTH THAT THE PARENTS, PARENT,~~
27 ~~GUARDIAN, OR OTHER PERSON MAY HAVE A SUPPORT PERSON PRESENT DURING ANY IN-PERSON MEETING WITH A SOCIAL~~
28 ~~WORKER CONCERNING EMERGENCY PROTECTIVE SERVICES. REASONABLE ACCOMMODATION MUST BE MADE IN~~
29 ~~SCHEDULING AN IN-PERSON MEETING WITH THE SOCIAL WORKER.~~

30 (2) The person filing the petition for immediate protection and emergency protective services has the

1 burden of presenting evidence establishing probable cause for the issuance of an order for immediate protection
2 of the child, except as provided by the federal Indian Child Welfare Act, if applicable. The court shall consider
3 the parents' statements, if any, included with the petition and any accompanying affidavit or report to the court.
4 If the court finds probable cause, the court may issue an order granting the following forms of relief, which do
5 not constitute a court-ordered treatment plan under 41-3-443:

6 (a) the right of entry by a peace officer or department worker;

7 (b) the right to place the child in temporary medical or out-of-home care, including but not limited to care
8 provided by a noncustodial parent, kinship or foster family, group home, or institution;

9 (c) a requirement that the parents, guardian, or other person having physical or legal custody furnish
10 information that the court may designate and obtain evaluations that may be necessary to determine whether
11 a child is a youth in need of care;

12 (d) a requirement that the perpetrator of the alleged child abuse or neglect be removed from the home
13 to allow the child to remain in the home;

14 (e) a requirement that the parent provide the department with the name and address of the other parent,
15 if known, unless parental rights to the child have been terminated;

16 (f) a requirement that the parent provide the department with the names and addresses of extended
17 family members who may be considered as placement options for the child who is the subject of the proceeding;
18 and

19 (g) any other temporary disposition that may be required in the best interests of the child that does not
20 require an expenditure of money by the department unless the court finds after notice and a hearing that the
21 expenditure is reasonable and that resources are available for payment. The department is the payor of last
22 resort after all family, insurance, and other resources have been examined.

23 (3) An order for removal of a child from the home must include a finding that continued residence of the
24 child with the parent is contrary to the welfare of the child or that an out-of-home placement is in the best
25 interests of the child.

26 (4) The order for immediate protection of the child must require the person served to comply
27 immediately with the terms of the order and to appear before the court issuing the order on the date specified
28 for a show cause hearing. Upon a failure to comply or show cause, the court may hold the person in contempt
29 or place temporary physical custody of the child with the department until further order.

30 (5) The petition must be served as provided in 41-3-422."

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